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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/780,935

02/18/2004

Gary Buhrman

BUHG 8858US

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01/18/2005

POLSTER, LIEDER, WOODRUFF & LUCCHESI

12412 POWERS COURT DRIVE SUITE 200

ST. LOUIS, MO 63131-3615

EXAMINER

VALENTI, ANDREA M

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 01/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/780,935

Applicant(s)

BUHRMAN, GARY

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2004.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-19 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14 are rejected under 35 U.S.C. 103(a) French Patent FR 2768018 to Chamoulaud in view of U.S. Patent No. 5,910,514 to Greenberg et al and U.S. Patent No. 3,870,583 to Gidge.

Regarding Claim 1, Chamoulaud teaches a base material made from a generally flexible and porous material (Chamoulaud #7) and an artificial mulch (Chamoulaud abstract second paragraph) material, the artificial mulch adhering to the upper surface of the base material (Chamoulaud #3 and Fig. 1) only along a lower portion of the artificial mulch-like material such that an upper portion of the artificial mulch-like material is exposed, the artificial mulch-like material substantially covering the upper surface of the base material (Chamoulaud Fig. 1 #2).

Chamoulaud teaches that a natural wood or an artificial/synthetic material can be used as the mulch material, but does not explicitly teach that the artificial/synthetic mulch has the appearance of natural wood. However, Greenberg teaches an artificial/synthetic mulch material in the appearance of natural wood (Greenberg abstract and Figs 1-2). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Chamoulaud with the teachings of

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Greenberg for the environmentally friendly advantage of recycling waste materials while creating an attractive landscape since Greenberg teaches that natural looking synthetic materials create an attractive landscape and have a longer lifespan.

Chamoulaud as modified is silent on the base material having a lower ground engaging surface. Chamoulaud teaches a plastic film between the base material and the ground (Chamoulaud #6). However, Gidge teaches a mulch material binded by an adhesive to a flexible and porous base material that has a lower surface that engages the ground and that a plastic film attached to the base material is optional but not necessary (Gidge Col. 5 line 22-24). Therefore, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Chamoulaud with the teachings of Gidge at the time of the invention with the removal of the plastic film (Chamoulaud #6) since this is merely an engineering/manufacturing design choice based on the desired manufacturing cost parameters and the application area for the mulch, e.g. the environmental location of the mulch application might be rocky ground or smooth ground, dry climate or moist climate, flat ground or undulating ground. Having the porous base material in contact with the ground enhances transpiration of moisture (Gidge abstract).

Regarding Claim 2, Chamoulaud as modified by Greenberg et al teaches natural appearing mulch wood chips fabricated from ground up tires (Greenberg abstract and Col. 2 line 29-35).

Regarding Claims 3 and 4, Chamoulaud as modified teaches the mulch-like material is bonded to the base material with a generally waterproof adhesive (Chamoulaud #3).

Regarding Claim 5, Chamoulaud as modified teaches the mulch-like material and the base material are made substantially from the same rubber or plastic material (Gidge Col. 3 line 35-40 and Greenberg Col. 1 line 61-63).

Regarding Claims 6, Chamoulaud as modified teaches the mulch-like material is adhered and/or bonded to the upper surface of the base material by chemical or heat (Chamoulaud #3 and Gidge Col. 3 line 1-45).

Regarding Claim 7, Chamoulaud as modified teaches the base material is made from one of either a generally porous plastic or a generally porous nylon material (Chamoulaud page 6 line 20-22 and Gidge Col. 3 line 37).

Regarding Claim 8, Chamoulaud as modified teaches the rollable mulch carpet is flexible enough to be stored, transported, or installed in a rolled up configuration (Chamoulaud abstract, Chamoulaud English translation abstract, and Gidge Fig. 14).

Regarding Claim 9, Chamoulaud as modified inherently teaches the mulch-like material is generally weather resistant (Chamoulaud teaches that the carpet is used outside and can be constructed of a synthetic material thus it inherently is weather resistant and Gidge Col. 1 line 62).

Regarding Claim 10, Chamoulaud as modified by Gidge teaches the rollable mulch carpet is manufactured in generally rectangular sections (Gidge Fig. 14), but is silent on the width of about 3ft. and the length about 10ft. However, it would have been

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obvious to one of ordinary skill in the art to further modify the teachings of Chamoulaud as modified by Gidge and Greenberg at the time of the invention since the modification is merely a change in size for an efficient/cost effective production of the product and does not present a patentably distinct limitation [*In re Rose*, 220 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955)].

Regarding Claim 11, Chamoulaud as modified by Gidges teaches the base material includes a plurality of rectangular openings (Chamoulaud Fig. 1 #7 and Gidge abstract line 10), but is silent on the opening being not greater than about 0.01 square inches. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Chamoulaud at the time of the invention since the modification is merely a change in size to efficiently allow for drainage but small enough to prevent weed growth derived through routine tests and experimentation. Different environmental application will require different rates of water transfer and thus the aperture size is climate dependent.

Regarding Claim 12, Chamoulaud as modified by Gidge teaches the base material and the mulch-like material are resistant to damage by insects (Gidge Col. 2 line 12 and Greenberg Col. 1 line 58).

Regarding Claim 13, Chamoulaud as modified teaches the mulch-like material is adhered to the base material in a single layer that substantially covers the upper surface of the base material (Chamoulaud Fig. 1 #2).

Regarding Claim 14, Chamoulaud as modified is silent on the single layer of mulch-like material has a thickness of about 0.5 inch or less or the rollable mulch carpet

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has a thickness of about 0.5 inch or less. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Chamoulaud at the time of the invention since the modification is merely a change in size for an efficient/cost effective production of the product and does not present a patentably distinct limitation [*In re Rose*, 220 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955)].

Claims 15-19 are rejected under 35 U.S.C. 103(a) French Patent FR 2768018 to Chamoulaud in view of U.S. Patent No. 5,910,514 to Greenberg et al.

Regarding Claims 15 and 18, Chamoulaud teaches a base material made from a generally flexible and porous material (Chamoulaud #7) and an artificial mulch (Chamoulaud abstract second paragraph) material, the artificial mulch adhering to the upper surface of the base material (Chamoulaud #3 and Fig. 1) only along a lower portion of the artificial mulch-like material such that an upper portion of the artificial mulch-like material is exposed, the artificial mulch-like material substantially covering the upper surface of the base material (Chamoulaud Fig. 1 #2).

Chamoulaud is silent that the artificial/synthetic mulch is either shredded rubber tires or plastic. However, Greenberg teaches an artificial/synthetic mulch material of shredded rubber (Greenberg abstract and Figs 1-2). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Chamoulaud with the teachings of Greenberg for the environmentally friendly advantage of recycling waste materials while creating an attractive landscape since Greenberg

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teaches that natural looking synthetic materials create an attractive landscape and have a longer lifespan.

Regarding Claim 16, Chamoulaud as modified inherently teaches that the carpet is manufactured in a generally rectangular section (Chamoulaud English abstract, Chamoulaud abstract and Figs. 1-2)

Regarding Claim 17, Chamoulaud as modified is silent on the width of about 3ft. and the length about 10ft. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Chamoulaud at the time of the invention since the modification is merely a change in size for an efficient/cost effective production of the product and does not present a patentably distinct limitation [*In re Rose*, 220 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955)].

Regarding Claim 19, Chamoulaud as modified is silent on the single layer of mulch-like material having a thickness of about 0.5 inch or less or the rollable mulch carpet has a thickness of about 0.5 inch or less. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Chamoulaud at the time of the invention since the modification is merely a change in size for an efficient/cost effective production of the product and does not present a patentably distinct limitation [*In re Rose*, 220 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955)].

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.



***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

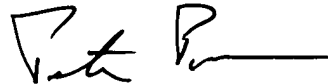
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti  
Patent Examiner  
Art Unit 3643

12 January 2005



Peter M. Poon  
Supervisory Patent Examiner  
Technology Center 3600